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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF MARIN

17 CHURCH OF SCIENTOLOGY) CASE NO. BC 038955
18 INTERNATIONAL, a California not-)
19 for-profit religious corporation;) MEMORANDUM OF POINTS AND
20) AUTHORITIES IN SUPPORT OF
21 Plaintiff,) MOTION TO COMPEL PRODUCTION
22) OF DOCUMENTS FROM DEFENDANT
23 vs.) GERALD ARMSTRONG
24) CORPORATION
25 GERALD ARMSTRONG; MICHAEL WALTON;)
26 THE GERALD ARMSTRONG CORPORATION,) DATE: January 21, 1993
27 a California for-profit) TIME: 9:00 a.m.
28 corporation; Does 1 through 100,) DEPT: 1
inclusive,)
Defendants.) TRIAL DATE: None
DISCOVERY CUT OFF: None
MOTION CUT OFF: None

29 I. INTRODUCTION

30 Plaintiff Church of Scientology International ("the Church")
31 has brought this litigation as a necessary step to preserve its
32 ability to effect recovery from defendant Gerald Armstrong
33 ("Armstrong") upon receiving an award of liquidated, general, and
34 punitive damages in the two cases which it has pending against
35 these defendants in the Superior Court for the County of Los

1 Angeles, Nos. BC 052395 and BC 084642. Armstrong has sought to
2 avoid the consequences of the liquidated damages clause in the
3 1986 Settlement Agreement and of his numerous violations of that
4 Agreement by hiding his assets. To that end, he transferred his
5 real property, a house on Fawn Drive in Marin County, to his
6 friend and attorney, defendant Michael Walton. This transfer was
7 made without consideration, although the house and land were
8 apparently worth in excess of \$397,500. Further, Armstrong has
9 claimed in deposition to have substantial assets in the form of
10 manuscripts and artistic works. At least some of these assets
11 were transferred to Armstrong's alter ego, defendant Gerald
12 Armstrong Corporation (hereinafter "Armstrong Corporation").

13 The Church has sought production of documents relating to
14 the existence and conveyance of assets of defendant Armstrong
15 Corporation. These requests for production have been met with
16 meritless objections and a refusal to engage in a meaningful
17 meet-and-confer process. Consequently the Church has brought
18 this motion in accordance with C.C.P. §2030(1) to compel the
19 production of the relevant documents.

20 II. STATEMENT OF FACTS

21 The Church served Armstrong Corporation with its First
22 Request for Production of Documents [Exhibit A to Declaration of
23 Andrew Wilson], on September 16, 1993. Armstrong Corporation's
24 responses and/or objections were due on October 11, 1993, and the
25 document production was due on October 21, 1993. Armstrong
26 Corporation did not produce any documents at all. Instead, after
27 obtaining an extension of time in which to respond, it served
28 responses consisting completely of objections, on October 12,

1 1993 [Exhibit B to Declaration of Andrew Wilson]. Counsel for
2 the Church wrote to counsel for Armstrong Corporation, Ford
3 Greene, detailing the reasons why the objections were not
4 adequate and requesting that Mr. Greene respond promptly. [Wilson
5 Declaration, Ex. C.] Mr. Greene never responded to Mr. Wilson's
6 letter, and has produced no documents.

7 The requests, twenty-three in all, seek documents which are
8 directly relevant to the Church's fraudulent conveyance action.
9 They ask for documents which evidence ownership of assets, and
10 transfers of those assets, whether tangible or intangible,
11 between Armstrong Corporation and defendants Michael Walton and
12 Gerald Armstrong. These matters are directly relevant to the
13 issue of defendant Armstrong's assets and whether and how he may
14 be attempting to transfer them out of his apparent direct control
15 to avoid obligations owed to the Church.

16 In response to each request, Armstrong Corporation has
17 asserted an identical series of boilerplate objections, claiming
18 that the request violates the right to privacy, freedom of
19 religion, speech, press and association; is not calculated to
20 lead to the discovery of admissible evidence and is irrelevant;
21 violates an unspecified "order" of the Los Angeles Superior
22 Court; and is ambiguous, overbroad, vague, burdensome, and
23 "harassive."

24 III. ARGUMENT

25 A. The Requests Do Not Violate Any Privacy Rights

26 Armstrong Corporation has objected to each of the Church's
27 requests by claiming that the requests "violate the right to
28 privacy." Armstrong Corporation does not identify whose "right to

1 privacy" is allegedly violated by this request. Assuming arguendo
2 that Armstrong Corporation is attempting to assert its own
3 privacy interests, this objection is improperly interposed on
4 behalf of a corporation. "[T]he constitutional provision
5 governing rights to privacy does not apply to corporations, but
6 rather, protects privacy rights of people." Roberts v. Gulf Oil
7 Corporation (1983) 147 Cal.App.3d 770, 195 Cal.Rptr. 393, 395,
8 408.

9 Nonetheless, the objection is simply irrelevant to the
10 Church's requests. The Church, plaintiff in an action for
11 fraudulent conveyance, seeks documents relating to the ownership,
12 sale, exploitation and transfer of defendants' assets. These
13 requests in no way infringe on the right to privacy of defendants
14 or any other person.

15 Privacy rights are not absolute. The courts must balance
16 the privacy rights of persons subject to discovery against the
17 right of civil litigants to discover relevant facts and the
18 public interest in obtaining just results in litigation. Vinson
19 v. Superior Court (1987) 43 Cal.3d 833, 842, 239 Cal.Rptr. 292,
20 299; Valley Bank v. Superior Court (1975) 15 Cal.3d 652, 125
21 Cal.Rptr. 553, 555. Even very personal and confidential
22 information may have to be disclosed if "essential to a fair
23 determination of the lawsuit." Morales v. Superior Court (1979)
24 99 Cal.App.3d 283, 160 Cal.Rptr. 194.

25 **B. First Amendment Privileges Are Not Applicable To the**
26 **Requested Documents**

27 Next, Armstrong Corporation claims that the requests violate
28 a whole panoply of First Amendment rights: the rights to freedom

1 of religion, speech, association and press. These objections are
2 simply incomprehensible when interposed on behalf of a privately-
3 owned, for-profit corporation which holds no religious belief,
4 does not "associate" and does not "speak."

5 Defendant Armstrong Corporation has offered no explanation
6 as to how the Church's reasonable requests for documents relating
7 to its assets could possibly violate any person's First Amendment
8 rights. The Church seeks routine discovery of the precise claims
9 stated in its complaint: that defendant Gerald Armstrong conveyed
10 assets to his co-defendants - Michael Walton and the Gerald
11 Armstrong Corporation - and other persons so as to essentially
12 render himself judgment proof, while at the same time engaging in
13 what he admits (and in fact boasts of) were breaches of his
14 December, 1986 settlement agreement with the Church. The Church
15 has been unable to find any authority which even remotely
16 suggests that a defendant corporation may refuse to produce
17 documents relative to its assets in a fraudulent conveyance
18 action by claiming that such production would somehow violate its
19 right to freely practice a religion or "associate" with persons
20 of its choice. The Church's request that Armstrong Corporation
21 explain this unique claim of privilege and supply such authority,
22 if any exists, was met with silence. [Ex. C to Wilson Dec.]

23 **C. All Of The Requests Seek Relevant Documents**

24 C.C.P. §2017(a) provides that a party may obtain discovery

25 [R]egarding any matter, not privileged, that is
26 relevant to the subject matter involved in the pending
27 action ... if the matter either is itself admissible in
28 evidence or appears reasonably calculated to lead to the
discovery of admissible evidence. Discovery may relate to
the claim or defense of the party seeking discovery or any
other party to the action.

1 The discovery provisions are interpreted liberally, with all
2 doubt resolved in favor of permitting discovery. Colonial Life &
3 Acc. Ins. Co. v. Superior Court (1982) 31 Cal.3d 785, 790, 183
4 Cal.Rptr. 810, 813, fn. 7-8; Greyhound Corp. v. Superior Court,
5 364 P.2d 266, 15 Cal.Rptr. 90; Davies v. Superior Court, 36
6 Cal.3d 291, 204 Cal.Rptr. 154.

7 Here, in a fraudulent conveyance action, the Church has
8 requested that defendant Armstrong Corporation produce documents
9 relating to its assets and transfer of that property to and from
10 its co-defendants. It is difficult to imagine material which is
11 more relevant to a fraudulent conveyance action, or more likely
12 to lead to the discovery of admissible evidence, than these
13 initial requests.

14 **D. The Requests Are Specific And Clear**

15 Armstrong Corporation also objects that the requests are
16 "burdensome," "vague," "harassive," and "ambiguous." During meet
17 and confer, the Church asked Armstrong Corporation's counsel to
18 identify, for each of the requests, what he considered to be
19 vague or unclear, and what about the requests presented an undue
20 burden. Mr. Greene did not respond, so the Church is left to
21 wonder what it is about these clear, specifically drawn requests
22 that Armstrong Corporation and its counsel do not understand.
23 Each of the requests seeks documents concerning assets of the
24 Armstrong Corporation. This is not a "burdensome" request when
25 made in the context of fraudulent conveyance litigation.

26 **E. The Requests Are Not Prohibited By Any Other Court Order**

27 Finally, Armstrong Corporation objects by claiming that an
28 order exists which prohibits discovery in this action. In fact,

1 this Court has already denied not one, but two, attempts by
2 Armstrong to stay discovery herein. [Ex. D to Wilson Dec.] The
3 cases pending in Los Angeles are, indeed, stayed while the Court
4 of Appeal considers Armstrong's appeal of the preliminary
5 injunction which that Court granted to the Church. Discovery
6 there, however, has nothing to do with discovery here. Nothing
7 in any order of the Los Angeles court can reasonably be construed
8 to prohibit, stay or interfere with discovery here and
9 defendant's attempt to refuse to produce documents relevant to
10 this action on that basis is frivolous and without merit.

11 IV. CONCLUSION

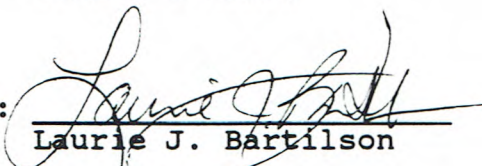
12 The Church has requested that Armstrong Corporation produce
13 relevant documents concerning the ownership, sale, exploitation
14 and transfer of assets between itself and its co-defendants. In
15 response, defendant Armstrong Corporation has claimed a bizarre
16 series of inappropriate objections, has not responded to the
17 Church's attempt to meet and confer and has not produced a single
18 document in response to the Church's requests. Armstrong
19 Corporation should be ordered to produce all documents responsive
20 to the Church's requests forthwith.

21 Dated: November 30, 1993

Respectfully submitted,

22 BOWLES & MOXON

23
24 BY:


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25
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28 CHURCH OF SCIENTOLOGY
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